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J. Gregory Jacobsen  
Scott M. Steeves  
E. Patrick Maguire  
Jason L. Mammone, P.E.  
JH Rump, Alternate  
Jessica L. Porter, Alternate

**TOWN OF DEDHAM**  
Commonwealth of Massachusetts



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**ZONING BOARD OF APPEALS**  
26 Bryant Street  
Dedham, Massachusetts 02026

**DECISION**

Case # VAR-08-11-1411

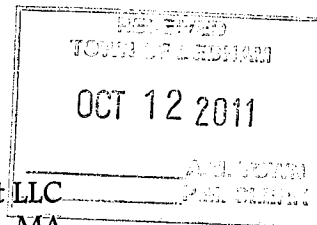
Applicant: Dedham Real Estate Development, LLC

Address: 780 Providence Highway, Dedham, MA

Map/Lot: 136/15, HB District

Date of Hearing: September 21, 2011

Date of Filing: October 12, 2011



The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, September 21, 2011, in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jason Mammone and E. Patrick Maguire. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:35 p.m., the Chairman called for the hearing on the appeal of Dedham Real Estate Development, LLC, of Norwood, MA. The Applicant seeks such special permits as may be required for an approximately 1,900 net square foot Dunkin' Donuts (a use requiring a common victualler license) with seating for 22 patrons and a "drive-thru" window, for an approximately 1,555 net square foot sub/sandwich shop (a use requiring a common victualler license) with seating for 12 patrons, and to establish the parking requirement for such uses at 23 parking spaces at property located at 780 Providence Highway in Highway Business (HB) Zoning District. *Town of Dedham Zoning By-Law Section 3.13 (Table 1, E.9, E.15), Section, 5.1.15 (Table 3), and Section 9.3.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicants were David Spiegel, Principal of Applicant, Elliott Ravech of Elliott & Co., owner's representative, Donald Myers of Norwood Engineering Co., Inc., Project Engineer, and Kenneth Cram of Land Strategies, LLC, Project Traffic Consultant.. Attorney Zahka had previously submitted a 4-page Memorandum as well as a Site Layout Plan of the subject property. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The subject property as shown on Dedham Assessors' Map 136 Lot 15 has approximately 56,025 square feet of land, and approximately 213.01 feet of frontage on Providence Highway. According to the Zoning Map for the Town of Dedham, the subject property is located in the Highway Business (HB) Zoning District.

Located on the subject property is a 4,675 gross square foot building partially occupied by The Vitamin Shoppe. Previously this building was occupied by Krispy Kreme and included a drive-thru window. The Dedham Planning Board approved a Site Plan for a 3,690 square foot addition to the existing building including a relocation of the drive-thru window. Said addition is currently under construction and upon completion the building will have a total of 8,365 square feet of gross floor area. As shown on the approved Site Plan, the site has 46 parking spaces.

The Vitamin Shoppe will continue to occupy approximately 3,325 square feet of (net) floor area in said building. An additional 1,050 square feet of (net) floor area will be occupied by a waxing salon. Both of these uses are allowed as of right in the HB Zoning District. Applicant proposes to lease approximately 1,900 (net) square feet in the building to a Dunkin Donuts for purposes of operating, conducting and maintaining a donut and coffee shop. The proposed Dunkin Donuts will have take-out and seating for 22 patrons. In addition, Dunkin Donuts shall have a so-called "drive-thru" window for take-out. The drive-thru window was shown on and approved as part of the Site Plan for the building. Applicant also proposes to lease the remaining 1,555 (net) square feet in said building to a sub/sandwich shop which also will have take-out service. This shop will have the seating for 12 patrons.

Inasmuch as both of the proposed Dunkin Donuts and sub/sandwich shop have facilities for on-premises consumption of food and beverage (i.e., tables and chairs), common victualler licenses will be required. In Dedham, the Board of Selectmen is the licensing board for the issuance of common victualler licenses. Line E.9. of Table 1 of the Dedham Zoning By-Law ("Use Regulation Table") provides that a "use requiring a common victualler license" is allowed in the HB Zoning District upon issuance of a special permit by the Zoning Board of Appeals (hereinafter referred to as the "ZBA"). In addition, Line E.15 of the Dedham Zoning By-Law ("Use Regulation Table") provides that "drive-through facilities" are permitted in the HB Zoning District upon issuance of a special permit by the ZBA. Under Table 3 ("Parking Table") of the Dedham Zoning By-Law, the proposed Dunkin Donuts and sub/sandwich shop would normally require approximately 30 parking spaces and the entire building would normally require approximately 53 parking spaces. As indicated, the subject property will be served by the 46 parking spaces shown on the Site Plan. Said Table 3 ("Parking Table") further provides that "the special permit required for an eating establishment may include modifications of these requirements based upon the specifics of each case". In this case, Applicant is requesting such a modification to establish parking for the proposed Dunkin Donuts and sub/sandwich shop at 23 spaces (and 46 parking spaces for the entire subject property).

In acting upon requests for special permits, the ZBA must determine that the "adverse effects of the proposed use will not outweigh its beneficial impacts" after consideration of the six (6) enumerated factors set forth in Section 9.3 of the Dedham Zoning By-Law.

Applicant respectfully submits it satisfies the above stated requirements and criteria for the issuance of the requested special permit (and the requested modification of the parking requirements). It should be noted that (other than the special permit for a "drive-thru") special permits are required only because the establishments propose to offer on-site consumption of food and beverage. In fact, if such on-site consumption was not proposed the establishments would be allowed as of right as a "retail business" and no parking relief would be required. In addition, previous lessee of the subject property had operated with a "drive-thru" with no adverse effects on the surrounding area.

The subject property and building are consistent with the neighborhood character. The subject property is located on a heavily commercial developed portion of Providence Highway. The building is already in existence (or under construction in a previously impervious area). The Project has already received Site Plan Approval from the Dedham Planning Board and has been issued an Order of Conditions from the Dedham Conservation Commission. Accordingly, the Project has little or no impact on the natural environment and there are adequate provisions for utilities and public services (or the same have been addressed through the Site Plan and Notice of Intent process).

The Project will serve social, economic, and community needs. Providence Highway is a heavily developed commercial area and with many commuters. There is no other coffee/donut shop or sub/sandwich shops on the entire length of the northbound lane of Providence Highway from the Westwood line to the Dedham Mall. This Project will serve and be a convenience to those employed in the area as well as those commuting.

Traffic flow within the site and parking (as modified) adequately serve the Project. As explained by Applicant's traffic consultant, the drive-thru window has been located to allow the stacking of about eight (8) vehicles outside of the parking area. If necessary, additional vehicles will be able to cue within the parking lot as well as the adjacent parking lot of the Bed Bath & Beyond plaza (also owned by Applicant) in such a manner that vehicles will still be able to travel through the site.

Applicant further submits that the subject property is adequately and sufficiently served by a total of forty-six (46) parking spaces instead of the required fifty-three (53) parking spaces. Given the nature of the proposed tenants and the presence of the drive-thru, Applicant anticipates that well over fifty (50%) percent of the sales will be some form of "take-out" not requiring any type of long term parking. In addition, Applicant owns the adjacent Bed Bath & Beyond property. The parking lot associated with this adjacent property is underutilized especially during the peak hours of the subject property. Accordingly, the specifics of Applicant's case warrant the modification of the parking requirements.

Upon motion duly made by J. Gregory Jacobsen and seconded by Scott M. Steeves, the ZBA voted unanimously to grant the requested special permits for an approximate 1,900 net square foot Dunkin' Donuts (a use requiring a common victualler license) with seating for 22 patrons and a "drive-thru" window, for an approximate 1,555 net square foot sub/sandwich shop (a use requiring a common victualler license) with seating for 12 patrons, and to establish the parking requirement for such uses at 23

parking spaces (i.e., a total of 46 parking spaces at the subject property). In granting of said special permit, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood.

Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no special permit shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that an appeal has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County.

Dated: October 12, 2011

James F. McGrail  
James F. McGrail, Esq., Chairman

Gregory Jacobsen 10/11/11  
Gregory Jacobsen

Scott M. Steeves  
Scott M. Steeves

E. Patrick Maguire  
E. Patrick Maguire

Jason L. Mammone  
Jason L. Mammone, P.E.